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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/743,260
Filing Date: December 22, 2003
Appellant(s): STEINDORF, ERIC C.

MAILED
JUN 22 2007
Group 3700

Stephen E. Bondura
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on February 9th, 2007 appealing from the Office action mailed on October 12th, 2006

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

There are no other prior or pending appeals, interferences or judicial proceedings that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal as stated in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments*

The statement of the status of amendments contained in the brief is correct.

(5) *Summery of Claimed Subject Matter*

The summery of claimed subject matter contained in the brief is correct.

(6) *Grounds of rejection to be reviewed on appeal*

The ground of rejection set forth in the appeal brief is correct.

(7) *Claim Appendix*

The appealed claims in the appendix of the brief are correct.

(8) *Evidence relied upon*

6,354,296	Baumann et al.	03-2002
4,951,664	Niemeyer	08-1990

(9) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

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Claims 1-3, 5, 10, 12, 13, 20 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Baumann et al. (US 6,354,296) and claims 4, 15 and 16 rejected under 35 U.S.C 103(a) as being unpatentable over Baumann et al. (US 6,354,296) in view of Niemeyer (US 4,951,664).

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **1-3, 5, 10, 12, 13, 20 and 25** are rejected under 35 U.S.C. 102(b) as being anticipated by Baumann et al. (US 6,354,296).

3. **As to claim 1**, Baumann teaches a face mask comprising a body portion configured to be placed over the mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment (**see figure 3**) such that the air of respiration is drawn through the body portion, the body portion having a baffle layer **12** having an outer and an inner surfaces that define a plurality of channels on the baffle layer configured for channeling fluid to different locations on the baffle layer (**see column 4 lines 45-55**), the baffle layer configured to aid in absorbing energy associated with fluid striking the body portion and to prevent fluid strike through.

4. **As to claim 2**, Baumann teaches a face mask wherein the channels are inter connected and are defined by the projections and the outer surface of the baffle layer, the channels having

an orientation such that the fluid is directed laterally away from the point of impact of the fluid through the channels (see column 4 lines 45-55 and figures 5a and 5b).

5. As to claim 3, Baumann teaches a face mask wherein the body portion has a first layer contacting the projections of the baffle layer; and the body portion has a third layer contacting the inner surface of the baffle layer (see figures 4a and 4b).

6. As to claim 5, Baumann teaches a face mask wherein the projections are circular pillows (see figures 5a and 5b).

7. As to claim 10, Baumann teaches a face mask wherein the plurality of projections extend from the outer surface of the baffle layer (see figures 4a and 4b; see column 4 lines 10-20).

8. As to claim 12, Baumann teaches a face mask comprising a body portion configured to be placed over the mouth and at least part of a nose of a user in order to isolate the mouth and the at least part of the nose of the user from the environment (see figure 3) such that the air of respiration is drawn through the body portion, the body portion having at least one layer, the layer having an outer surface facing away from the user when worn and an inner surface facing towards the user when worn (see figures 3, 4a and 4b), the layer having a plurality of projections extending therefrom, the projections aiding in absorbing energy associated with fluid striking the body portion, wherein the projections define a plurality of channels on the layer configured for channeling fluid to different locations on the layer (see column 4 lines 45-55).

9. As to claim 13, Baumann teaches a face mask wherein the body portion has an inner facing layer contacting the skin of the user when worn, an outer facing layer, and a filtration media layer disposed between the inner facing layer and the outer facing layer, wherein the layer

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with the plurality of projections is any one of the inner facing layer, outer facing layer, and filtration media layer (see column 3 lines 55-65).

10. As to claim 20, Baumann teaches a face mask wherein the projections are circular pillows (see figures 5a and 5b).

11. As to claim 25, Baumann teaches a face mask wherein the plurality of projections extend from the outer surface of the layer having the projections (see figures 5a and 5b).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 4, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann et al. (US 6,354,296) in view of Niemeyer (US 4,951,664).

15. As to claims 4, 15 and 16, Baumann discloses the applicant's invention as claimed with the exception of providing a first layer/additional layer stiffer than the baffle layer. Niemeyer discloses an apparatus that does provide a first layer/additional layer stiffer than the baffle layer.

Therefore it would have been obvious to modify Baumann's invention by providing a first layer/additional layer stiffer than the baffle layer as taught by Niemeyer in order to seal an expanding and contracting perimeter to the skin of the face.

(10) Response to Argument

The appellant argues that Baumann's resilient member 12 with the pillowed lower density region 44 is not configured to be placed over a mouth and at least part of a nose of a user. First the examiner would like to point out that the appellant's claims require a "body portion having a baffle layer" (claim 1) or "a layer" (claim 12). The claims does require that the entire body portion be covered by the "baffle layer" or "layer", nor do they require that the "baffle layer" or "layer" cover the mouth and at least part of a nose of the user. The Baumann reference clearly shows a body portion having a baffle layer.

Second the examiner would like to point that Baumann clearly states that **"Resilient member 12 can be positioned on the mask portion in a variety of configuration. For example, resilient member 12 can be affixed to the major exterior surface 14 of mask portion 16"** (see figures 1 and 3), indicates that the body portion in Baumann's reference has "a baffle layer" or "a layer" as recited in the appellant's claims and clearly shows that the body portion of the mask is intended to cover the mouth and at least part of the nose.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Nihir Patel

June 19th, 2007

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